

## LEGAL ADVICE AND GRAMA

1. According to my prosecutor, § 41-12a-303.2(b) says a declarations page, binder, or “valid” proof of insurance card can be submitted to dismiss an insurance violation. As a clerk, I will not accept these to dismiss, I require a statement from the insurance company verifying that the vehicle was insured on the date of the violation. Does a clerk have the authority to dismiss if the defendant provides a declaration page, binder or insurance ID card at the window?

**Answer:** Under Rule 4-704, a clerk can dismiss an insurance violation when a defendant “presents proof that valid insurance was in effect for the vehicle at the time the citation was issued.” The rule does not describe what is considered “proof” of valid insurance. Section 41-12a-303.2 suggests that a defendant can have a charge dismissed upon presenting proof of a valid insurance policy, insurance policy declaration page, or binder notice. Realistically the only proof that an insurance policy is “valid” is through a statement from the insurance company. The court practice is therefore acceptable. However, having said that, a judge ultimately determines what the judge is willing to accept as valid proof. Therefore, if a judge approves the practice, a judge can authorize a clerk to dismiss citations whenever a defendant presents a declaration page, binder notice, policy, or ID card which shows that insurance was in effect on the date of the citation.

2. Can a clerk or judge recommend an attorney?

**Answer:** A clerk or judge cannot recommend an attorney. The court must remain neutral in all matters and recommending an attorney compromises that neutrality.

3. Can the courts impose ignition interlock still or is it up to Driver’s License Division?

**Answer:** The court can still impose ignition interlock. There was a proposal to have DLD be the entity to authorize interlock, but that has not passed.

4. What is the maximum amount a court can charge for an abeyance fee?

**Answer:** In traffic cases, the maximum amount that a court can charge for a plea in abeyance fee is \$25.00 greater than the amount stated for the offense in the Uniform Fine/Bail Schedule. In other cases there isn’t a maximum. The court cannot impose any other plea in abeyance fee.

5. In small claims court when a judgment has been issued/ordered, when can the plaintiff proceed with collections procedures?

**Answer:** The plaintiff can proceed immediately with collection. Many years ago there was a law which stated that the plaintiff could not proceed until ten days had expired. However, that law no longer exists.

6. Are justice courts to follow civil procedure rules only when not listed in the small claims civil procedure rules?

**Answer:** For small claims cases, the small claims procedural rules are the only rules that apply. The rules of civil procedure cannot be used in small claims cases because that might open up small claims cases to processes such as formal discovery. However, there are circumstances in which courts have used the rules of civil procedure to allow a litigant to proceed, for example, with a motion to dismiss or a motion for relief from judgment. If there is a question as to whether a rule can be applied, a judge should decide or the court can contact the Administrative Office of the Courts.

7. After an appeal is filed and the case file forwarded to district court, can we leave the case open at our court as well as leave the warrant/commitment active on statewide?

**Answer:** When a case is appealed to the district court, the case remains open in the justice court unless and until a defendant obtains a certificate of probable cause. If a certificate of probable cause is issued, the justice court should close its case, subject to reopening if the district court sends the case back to the justice court. If the justice court has issued a warrant or commitment, the warrant or commitment should be recalled when a certificate of probable cause is issued.

8. Gotcha checks, when do you recall the warrants? Do you leave them active?

**Answer:** A warrant should be recalled whenever the warrant was issued on a non-mandatory appearance case and the GOTCHA check is sufficient to pay the fine for that case. In all other cases, the court is not required to recall the warrant.

9. When a case is transferred to district court from justice court on appeal and the defendant has a court date in district court, and there is an open warrant or commitment from the justice court, what should the justice court do with that open justice court warrant/commitment?

**Answer:** See answer to Question 7.

10. Should we have hand-written minute entries in justice courts? Should we rely on our electronic docketing? Are the hand-written entries in a defendant's file public information?

**Answer:** As a general rule, the court should rely on electronic docketing and should put all minute entries into the electronic docket. A clerk can take notes in writing and use the notes to create the official minute entry. If a handwritten minute entry is in a case file, it is public information.

11. Is it bad to suggest a plea in abeyance to young kids when they have their first speeding

citation and they have no clue how the system works or what is available to them? Some courts go to the extreme and are curt and rude when people ask “how do we” questions. What is your advice about determining common courtesy versus legal advice?

**Answer:** In many courts, it is common practice for the clerks to inform defendants that pleas in abeyance are available for certain types of cases. Therefore, it is okay for a court to inform young kids about the availability of pleas in abeyance, if they are informing others of the same availability. As a general rule, court employees should be as helpful as possible when answering questions from the general public. A court clerk cannot advise someone what they should or should not do, but a clerk can explain available options when a person asks about those options. A court employee must be careful about steering defendants in a particular direction. However, an employee can answer most questions that are asked, particularly if the clerk gives a general answer. For example, if a defendant asks what will happen if the defendant enters a plea in abeyance agreement, the clerk cannot specifically answer what will happen to that defendant, but the clerk can explain what happens generally in plea in abeyance cases.

12. Is telling a defendant their options giving legal advice? In small claims is telling the defendant the next step giving legal advice?

**Answer:** See answer to Question 11. As a general rule, if a clerk explains options available, and the clerk explains all of the options available, then a clerk will not be giving legal advice.

13. Is there a minimum amount for a plea in abeyance fee on moving violation cases?

**Answer:** A court should follow the Uniform Fine/Bail Schedule in all plea in abeyance cases. However, there is no minimum fee amount.

14. When paying jury/witness fees of \$18.50, do you pay an officer per case or per day?

**Answer:** An officer is paid the same fee as any other witness. It is therefore \$18.50 per day and not per case. However, if the officer is on duty, the officer is not entitled to any witness fee.

15. How many plea in abeyances can be held on DUI cases? Will there be a law stopping DUI pleas held in abeyance?

**Answer:** It is possible that there will be a law in the future which will prohibit pleas in abeyance in DUI cases. Until then, they are permitted. Technically, there is no limit to the number of pleas in abeyance in DUI cases. However, a plea in a abeyance is considered a conviction for future enhancement purposes. Thus, if a defendant has had two previous DUI's resolved through plea in abeyance in the past ten years, and the defendant is arrested a third time for DUI, the defendant should be charged with a third

**degree felony in district court.**

16. We have had a defendant say that because the officer did not sign the citation, the defendant does not have to pay. Is this true?

**Answer: Under the law, an officer must sign a citation. If an officer did not sign a citation, the citation should be referred to the prosecuting attorney for the filing of a formal information. If an officer does not sign a citation, it does not exonerate a defendant from having to pay, but simply requires the prosecutor to follow different steps in order to properly charge the defendant.**

17. If an officer does not write the correct violation date on the citation, is the citation valid?

**Answer: The correct violation date is not a critical piece of information on the citation. The citation is still valid and can be amended to reflect the correct violation date.**

18. Who is responsible to make sure a defendant is fingerprinted?

**Answer: Under Rule 4-609, it is the jail's responsibility to fingerprint defendants. The rule indicates that the court should refer defendants to the jail for booking and fingerprinting. The court should avoid becoming involved in the fingerprinting practice.**

19. It is permissible to have the clerks performing the required fingerprinting or should the law enforcement agency perform this duty?

**Answer: See answer to Question 19.**

20. It is the court's responsibility to report dispositions to BCI. All CORIS systems statewide, including stand alone systems, feed this information to BCI automatically. Should a clerk be required to access BCI and check to see if the disposition and OTN made it onto BCI?

**Answer: A clerk is not required to access BCI to ensure that the correct information made it to BCI. If a clerk has been granted BCI access then a clerk would be permitted to check that information.**

21. If a defendant is charged with a DUI and fingerprinted then the prosecutor amends the charge to a reckless (not a finger printable offense), is the clerk responsible to make sure BCI knows what occurred?

**Answer:** In this situation, the clerk is only required to report the conviction, the same as in any other case. The clerk is not otherwise required to explain what occurred during the case.

22. In assessing delinquent and warrant enhancements if the law enforcement officer does not submit the citation timely and the defendant calls or comes in to pay, can the court file the case from the copy?

**Answer:** The court can accept a copy and receive a defendant's payment. However, the court should be very careful before implementing such a process. In some cases, a prosecutor might be screening a citation to determine whether additional charges should be filed. If the court accepts payment on a copy, this may affect the prosecutor's ability to bring additional charges. A clerk should consult with the judge and the prosecutor on the practice the court will follow.